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S. 782 - Specific Problems Affecting the Central Intelligence Agency

Section 1(b), while commendably protecting an employee from compulsory attendance at meetings and lectures on matters unrelated to his official duties, would, for example, make it unlawful for any department or agency to "take notice" of the attendance of one of its employees at a meeting held by a subversive group or organization. While it is doubted that this is the intent of the bill, it clearly is one of the effects of Section 1(b).

Section 1(d), in making it unlawful to require an employee to make any report of his activities or undertakings not related to the performance of official duties, is similar in its effect to Section 1(b). It poses the question of whether the Agency, having discovered that one of its employees is in regular and unreported contact with an intelligence agent or official of a foreign government, would be violating the law in asking the employee for an explanation of this relationship, particularly in the case in which the employee's official duties do not relate to matters involving that particular foreign government. Further, this Section is in conflict with a long-established policy that employees of the Agency must obtain prior approval in making public speeches or writing for publication.

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These and additional restrictions are established to prevent the inadvertent disclosure of sensitive intelligence through employee activities or undertakings not related to official duties. Here again the question arises whether the Agency would be violating the law in exerting control over these activities.

Section 1 (e) deals with psychological testing. S. 782 authorizes the Directors of the FBI, NSA and CIA, or their designees, on the basis of a personal finding in each individual case, to use such tests for the purpose of inquiring into the sensitive areas of religious beliefs and practices, personal family relationships, and sexual attitudes, but it denies the use of such testing to all other departments and agencies without regard to the fact that employees of these departments and agencies may be regular recipients of highly classified information.

Section 1 (f) establishes the same prohibition on the use of the polygraph test as applies to psychological testing, and grants the same partial exemption to the FBI, NSA and CIA. Again, the use of the polygraph test in the proscribed areas is denied to all but these three agencies, irrespective of the fact that highly sensitive positions may be involved.

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Section 1(k) poses a problem for the Agency in that it would appear to require the presence of counsel in behalf of an employee as soon as and at the very moment that a supervisor were to ask the employee the reasons for some suspected dereliction of duty ranging from a serious security violation to tardiness in reporting for duty or sloppy work habits. This provision goes to the very heart of the continuous process of review of intelligence operations and activities to determine their effectiveness, the quality of information derived, and professionalism in which the activities were conducted. Out of such interviews or postmortems there naturally evolves the review of individual employee performance which, if unsatisfactory, can readily result in disciplinary action. A great many extremely sensitive intelligence operations and activities are involved in this process and the presence of private counsel in behalf of an employee would raise most serious questions as to the appropriate control and protection of the intelligence information involved. There is no desire that an employee should be deprived of the right of counsel when appropriate, but the wording of this Section would make it "unlawful" to ask the simple preliminary questions which are necessary to establish whether or not there is some failure in performance or dereliction of duty unless provision is made for the presence of counsel if requested by the employee.

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Section 4 of the bill would permit any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the Act to bring civil action in the district courts. Communist or other subversives acting on their own or on instructions from foreign agents, could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews. A concerted effort of this nature could seriously impair the orderly recruitment process of the Agency. The will and ability of small minorities to interrupt the normal functioning of both public and private institutions has been amply demonstrated in recent months. There is little doubt that such groups would be quick to recognize and exploit the weapon provided by this Section of the bill.

Section 5. The comments made with respect to Section 4 above are only to a slightly lesser extent equally applicable to Section 5.

Section 6. This Section grants a partial exemption to the FBI, NSA and CIA with regard to financial disclosure and the use of psychological and polygraph testing by requiring each of the Directors, or their designees, to make a personal finding with regard to each individual case that such testing or financial

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disclosure is required to protect the national security. If the Agency is to comply with the spirit of the law, it will still be necessary that a personal finding be made in each individual case that such testing or financial disclosure is required to protect the national security. Inquiry by these means into the proscribed areas, which are the key areas of vulnerability, will not be possible as a matter of general regulation.

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CIA - PERSONNEL SECURITY AND SUITABILITY

The Agency has special responsibility to ensure the loyalty, security consciousness, integrity and psychological stability of its employees:

a. Soviet and other hostile services assign overriding priority to penetrating U.S. intelligence organs by identifying and exploiting personal vulnerabilities and weaknesses of our personnel.

b. Such penetration can enable the enemy to identify and neutralize our own intelligence operations; learn what we know, and don't know, about enemy capabilities and intentions; gain insights enabling the enemy to confuse and deceive us; and provide vital information about U.S. national policy, military capabilities, technology, etc., with which Agency personnel often become familiar in the course of their routine work.

c. Intelligence personnel are not only an attractive target for the enemy, but in many respects a particularly accessible one. Unlike members of most Government organizations, intelligence personnel often must carry out their demanding and sometimes dangerous assignments completely alone and in hostile areas. They are thus subject to severe psychological pressures. They

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are far removed from immediate supervision, or even observation by friendly colleagues. In these circumstances any latent vulnerabilities and instabilities in their character or loyalty may come to the surface and be detected and exploited by an ever alert enemy.

d. The only protection against these hazards is a careful and thorough assessment of the individual to ensure the selection of the right man for the job.

e. This is essential not only in the interest of the Agency and the Government, but in that of the individual as well. Many people, through no fault of their own, are subject to latent weaknesses and vulnerabilities of one sort or another, and we believe it would be a great disservice to them to impose upon them burdens for which they are unfitted, perhaps leading to unfortunate consequences for them as well as for the Agency.

2. Hence we have over the years, with the best professional advice available, devised a system of medical and psychological tests and security checks designed to identify potential problems in these fields before they can cause serious damage. In a sense these tests may be compared with the thorough assessments employed in the selection of jet pilots and astronauts-- too much is at stake to take chances with avoidable human error or weakness.

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3. In the past there have been all too many cases where sensitive agencies of both the U.S. and other free world governments have suffered massive damage precisely because latent human weaknesses of individuals in key positions were detected and exploited by our enemies ; several cases a few years back seriously disrupted the effectiveness of NSA, the British Intelligence Service has still not ^{fully} recovered from the effects of the Philby, Blake and other cases; the Germans, French and Swedes, among others, have had similar experiences; and even now an intensive investigation is taking place in Brussels to determine the damage to NATO security resulting from a recent espionage case there.

4. In sum, CIA's procedures for ensuring the security and suitability of its personnel have been developed over the years on the basis of the Agency's specialized knowledge of the aims and methods of the opposition, the importance and sensitivity of the Agency's responsibilities, the best available professional advice, and the cumulative practical experience of over two decades of Agency management. These procedures have, with only the rarest exceptions, had the full understanding and support of Agency personnel. Any major changes in these procedures should be adopted only after a most careful examination of the possible consequences.

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5. Because of the nature of the Agency's work, strong command authority is particularly essential. The provisions in the bill permitting an employee to bring in private counsel at the very outset of an inquiry into his performance, with the appeal provisions permitting him to go into district court or to the Board of Employee Rights, could cause very real problems. A few dissident employees using either frivolous or false accusations against a supervisor could completely undermine the authority of a supervisor and confront the Agency with a choice between permitting a breakdown in supervisory authority or defending the supervisor in open court, quite possibly necessitating the disclosure of highly sensitive information.

6. Of even more concern is the provision granting any applicant for employment the right to file suit in district court for alleged violations, or threatened violations, of the provisions of the bill. The Agency in recent years has experienced considerable harassment by dissident minorities in its recruitment efforts on the nation's campuses. Further, it has been brought to our attention recently that dissident minorities have taken advantage of a provision in the Selective Service Law permitting registrants to examine their own files at local draft offices, with the result that in the State of California draft boards are being so severely harassed that they are unable to accomplish any other business.

Recognizing the weapons provided by the appeal provisions of this bill, such dissidents might launch a campaign of litigation virtually paralyzing the Agency's recruiting program and severely straining its administrative resources.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Ervin bill S. 782

FROM:

Legislative Counsel

STAT

EXTENSION

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NO.

DATE

25 February 1969

TO: (Officer designation, room number, and building)

DATE

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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Mr. Karamessines

25 FEB 1969

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I would appreciate your comments especially on the notes on "CIA- Personnel Security and Suitability"

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1:1 - Looks fine.

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